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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,459	02/19/2004	Shanker Gupta	9022-42	4853
20792	7590	05/13/2008		
MYERS BIGEL, SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627			EXAMINER HENLEY III, RAYMOND J	
			ART UNIT 1614	PAPER NUMBER
			MAIL DATE 05/13/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/782,459

Applicant(s)

GUPTA ET AL.

Examiner

Raymond J. Henley III

Art Unit

1614

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/24/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

CLAIMS 1-14 AND 16-37 ARE PRESENTED FOR EXAMINATION

Applicant's amendment and remarks filed September 24, 2008 has been received and entered into the application.

Accordingly, claim 15 has been cancelled and the specification at page 1 has been amended.

Applicants' remarks and amendments have overcome certain issues set forth in the previous Office action. Any objection or rejection not reiterated from the previous office action is hereby withdrawn. The following Office action constitutes the totality of issues remaining in the present application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Status

In light of Applicants' amendments and remarks, the following the status of the claims are:

- (i) claims 20-37 are allowable;
- (ii) claims 8, 9, 11, 13, 14, 16-19 remain/are objected to as depending from a rejected base claim, but are allowable if re-written in independent form; and
- (iii) claims 1-7, 10 and 12, *remain rejected*.

Claim Rejection - 35 USC § 103

Claims 1-7, 10 and 12 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrandis et al., (U.S. Patent Application Publication No. 2005/0181999), already of record, for

the reasons of record as set forth in the previous Office action dated June 22, 2007 at pages 4-6, which reasons are here incorporated by reference.

Applicants' remarks presented at pages 9-12 of their amendment have been carefully considered, but fail to persuade the Examiner that an error has been made in determining the subject matter of claims 1-7, 10 and 12 obvious.

In attempting to refute the present rejection, Applicants have initially indicated that the subject matter would not have been obvious because they propose that the Courts consider a reference "in its entirety" and the Examiner has failed to do so.

In particular, Applicants remark that Ferrandis teaches topical dermatological compositions, while such is not the case in the present claims. The present claims, however, in no way limit the present claims to non-topical formulations by including in such claims any ingredients that would not be suitable for non-topical administration. Applicants' arguments appear to rest on the proposition that Ferrandis et al. fail to teach anything other than topical administration.. However, the arguments, together with the present claim construction, directed to compositions of matter rather than methods of use, preclude the Examiner from affording Applicants' arguments the significance urged. Also, should Applicants attempt to amend the claims by simply inserting a phrase indicating that the compositions are suitable for topical administration, such would NOT define over the art because it is what the composition is composed of and NOT its intended use which defines patentability.

Applicants have also attempted to distance the presently claimed subject matter from that which is taught by Ferrandis because Ferrandis only teaches that sphingolipids may be included and that sphingolipids are only a part of a laundry list of ingredients. The comprehensiveness of

a particular disclosure, however, fails to diminish or negate its effectiveness in teaching one of ordinary skill in the art which ingredients may be employed. Indeed, the Examiner has no doubt that the ordinarily skilled artisan would have been able to read the Ferrandis et al. article, understand that each of listed ingredients may be employed in the mixtures taught and thus go forward to prepare each and every composition taught by Ferrandis and use such compositions in the manner taught by Ferrandis. Applicants have presented no cogent reasoning as to why such is not the case. As such, the Examiner cannot agree with Applicants that the references is insufficient to teach or suggest the presently claimed subject matter.

Accordingly, for the above reasons, the Examiner deems that certain claims are allowable; certain claims are objected to; and certain claims are rejected.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Henley III whose telephone number is 571-272-0575. The examiner can normally be reached on M-F, 8:30 am to 4:00 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raymond J Henley III/
Primary Examiner, Art Unit 1614

May 11, 2008